

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

Re: The Appeal of the Order of
conditional License and Order to Forfeit a Fine of the License of Kim Harris to
Provide Family Child Care **FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

Administrative Law Judge Lucinda E. Jesson (ALJ) conducted a hearing in this matter on June 28, 2006, at 9:30 a.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401.

Rebecca S. Morrisette, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, MN 55415, appeared on behalf of the Hennepin County Human Services and Public Health Department (County) and the Minnesota Department of Human Services (Department). The Respondent Licensee, Kim Harris, 2018 Fremont Avenue North, Minneapolis, MN 55411-2539, did not appear in person or by counsel.^[1] The OAH hearing record closed at the end of the hearing on June 28, 2006.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner. To file exceptions, parties should forward them to the office of Acting Commissioner Cal Ludeman, P.O. Box 64941, St. Paul, MN 55164-0941.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the

expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

STATEMENT OF THE ISSUES

Should the Licensee's family child care license be placed on conditional status and a fine assessed because she violated statutes and rules that are applicable to family child care licensees?

The Administrative Law Judge concludes that the Licensee did violate statutes and rules that are applicable to her family child care license. The Commissioner's order placing her license on conditional status and assessing a fine should therefore be affirmed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 22, 2006, a copy of the Notice of and Order for Hearing in this matter was delivered via first class mail to Kim Harris, 2018 Fremont Ave North, Minneapolis, MN 55411-2539, as appears from an Affidavit of Service by Mail on file herein. That address was the address that the Respondent had provided to the Department, in connection with her licensure as a provider of family child care services.^[2]

2. The Notice of and Order for Hearing scheduled the hearing in this matter for Tuesday, March 28, 2006 at 9:30 a.m. at the Office of Administrative Hearings. Shortly before the hearing, the ALJ was notified that the parties jointly requested a continuance to finalize a settlement, which they anticipated would take approximately one month. In a letter to the parties dated March 23, 2006 the ALJ confirmed this request and granted the continuance.

3. On May 17, 2006 the ALJ wrote the parties requesting an update on whether the settlement had been finalized. Upon learning that an agreement had not been finalized, the ALJ wrote the parties on June 7, 2006 setting the new hearing date at 9:30 am at the Office of Administrative Hearings in Minneapolis on June 28, 2006.

4. The Respondent did not appear for the hearing, did not obtain the ALJ's prior approval to be absent from the hearing, did not file a Notice of Appearance, and did not request a continuance or any other relief.

5. The Notice of and Order for Prehearing Conference and Hearing contained the following informational warning:

Failure to appear at the hearing or prehearing conference will result in the allegations of the Notice and Order for Hearing, including the incorporated order, being taken as true. This means that the action being appealed will be upheld.^[3]

6. Because Respondent failed to appear at the hearing, she is in default.

7. When a party is in default, Minn. R. 1400.6000 provides that the allegations contained in the notice of and order for hearing may be taken as true. The allegations contained in the Notice and Order for Hearing, including the incorporated Order to Forfeit a Fine and of Conditional Licensure, are all taken as true and incorporated by reference into these Findings of Fact.

8. At the hearing, Hennepin County Child Care Licensing Quality Assurance Specialist and former Child Care Licensing Worker Tamiko Thomas provided testimony regarding the county agency's July 21, 2005 recommendation that the Commissioner place Ms. Harris' license on conditional status and that a fine be assessed. The Commissioner issued an order to Forfeit a Fine and and Order of Conditional License on November 10, 2005 based upon this recommendation.^[4]

9. After receiving the Commissioner's November 10, 2005 Order, Ms. Harris was issued two additional Correction Orders, dated January 30, 2006 and March 3, 2006. The January 30, 2006 Correction Order cited Ms. Harris for the following conditions: capacity—over ratio for infants; missing immunization forms; missing admission and arrangements forms; missing provider policies form and hazardous materials.^[5] The March 3, 2007 Correction Order cited Ms. Harris for the following conditions: missing medication and immunization forms and missing provider policies.^[6] Despite repeated requests from Ms. Thomas, Ms. Harris did not respond to requests to complete and return the outstanding correction orders.^[7]

10. On May 12, 2006 Ms. Harris' child care license was closed for failing to complete her relicensing packet and pay the required \$130 fee.^[8]

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make

findings, conclusions, and recommendations or a final order, as the case may be.^[9]

2. The Department and the County gave proper and timely notice of the hearing, and they have also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

4. The Respondent is in default herein as a result of her failure, without the ALJ's prior consent, to appear at the hearing in this matter.

5. Respondent violated Minn. R. 9502.0385, subdivision 3, which requires license holders to complete six hours of training per year after the initial year of licensure.

6. Respondent violated Minn. Stat. § 245A.144, which requires license holders to complete training on reducing the risk of sudden infant death syndrome prior to caring for infants.

7. Minn. Stat. § 245A.06, empowers the Commissioner to issue a correction order and an order of conditional license to a license holder where the licensee failed to comply with law or rule and this failure does not imminently endanger the health, safety or rights of the persons served by the program.

8. Minn. Stat. § 245A.07 empowers the Commissioner to impose fines on license holders for each occurrence of violation of law or rule governing health, safety or supervision.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner AFFIRM the November 10, 2005 Order of Conditional License and Order to Forfeit a Fine with regard to Respondent's family child care license.

Dated: August 9, 2006

s/Lucinda E. Jesson

LUCINDA E. JESSON
Administrative Law Judge

Reported: Default (1 tape)
No transcript prepared

^[1] See Finding No. 4.

^[2] Testimony of Tamiko Thomas.

^[3] Notice and Order for Hearing.

^[4] Ex. 2.

^[5] Ex. 17.

^[6] Ex. 18.

^[7] Ex. 19; Thomas testimony.

^[8] Thomas testimony; ex. 21.

^[9] Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.